

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff/Counter-Defendant,

PUEBLO OF SANTA CLARA,

Plaintiff-Intervenor/Counter-Defendant,

v.

CITY OF ESPAÑOLA, a New Mexico
Municipal Corporation,

Defendant/Counter-Claimant,

and

Case No. 1:16-CV-00391 JCH-LAM

CITY OF ESPAÑOLA, a New Mexico
Municipal Corporation,

Third-Party Plaintiff,

v.

ONEBEACON SPECIALTY INSURANCE COMPANY,
ATLANTIC SPECIALTY INSURANCE COMPANY,
and DANIELS INSURANCE AGENCY, INC.,

Third-party Defendants.

**CITY OF ESPAÑOLA’S THIRD-PARTY COMPLAINT
AGAINST INSURERS FOR DECLARATORY JUDGMENT**

COMES NOW the Third-Party Plaintiff, City of Española, a New Mexico municipal corporation (“City”), by and through its attorneys, Coppler Law Firm, P.C. (Gerald A. Coppler), and for its complaint against Third-Party Defendants OneBeacon Specialty Insurance Company (“OneBeacon”), Atlantic Specialty Insurance Company (“Atlantic Specialty”) and Daniels Insurance Agency, Inc. (“Daniels”) (Third-Party Defendants are jointly referred to as “Insurers”), and states:

Parties, Jurisdiction and Venue

1. This is an action for declaratory relief concerning the City's rights under an insurance policy to a defense and indemnity in this action.

2. Plaintiff City is a New Mexico municipal corporation located in Santa Fe County and Rio Arriba County, New Mexico.

3. Defendant OneBeacon is a Pennsylvania-domiciled insurance company, registered as an insurance company with the New Mexico Office of Superintendent of Insurance to sell insurance in New Mexico with its registered office located at 150 Royall Street, Canton, Massachusetts. OneBeacon insures public entity risk in New Mexico.

4. Defendant Atlantic Specialty is a New York domiciled insurance company, registered as an insurance company with the New Mexico Office of Superintendent of Insurance to sell insurance in New Mexico with its registered office located at 605 Highway 169 North, Suite 800, Plymouth, Minnesota. Atlantic Specialty insures public entity risk in New Mexico.

5. Defendant Daniels is a New Mexico insurance company, registered as an insurance firm and surplus line broker with the New Mexico Office of Superintendent of Insurance with its registered office at 300 N. Linam, Hobbs, New Mexico, 88240 and has offices in Santa Fe, Albuquerque and Hobbs, New Mexico. Defendant Daniels sells public entity risk insurance in New Mexico.

6. The Court has jurisdiction of the City's claims in this Third-Party Complaint pursuant to 28 U.S.C. § 1367 (Supplemental Jurisdiction). Moreover, declaratory judgment actions are authorized by Congress at 28 U.S.C. §§ 2201-2202.

7. Insurers OneBeacon and Atlantic Specialty are registered with and, therefore, subject to service of process through the New Mexico Office of Superintendent of Insurance and subject to the Court's personal jurisdiction.

8. Venue properly lies in this District under 28 U.S.C. § 1391(b), as the insurance policy at issue was purchased in New Mexico and the trespasses alleged against the City in the Complaint [Doc. 1] and the Pueblo Complaint [Doc. 8] are alleged to have occurred in the counties of Rio Arriba and Santa Fe, in the State of New Mexico.

Facts

9. Plaintiff by reference re-alleges all prior allegations stated in paragraphs 1 through 8 as if fully set forth herein.

10. Insurers sold public entity risk insurance, Atlantic Policy Number 791-00-03-37-0005 (the "Policy"), to the City, insuring the City for various governmental risks, for the period from June 30, 2015 to June 30, 2016. Therefore, the Policy was in effect on May 6, 2016 and June 3, 2016.

11. Defendant Daniels brokered and/or sold the City the Policy in Santa Fe County, New Mexico,

12. The Policy includes a Commercial General Liability Coverage Form for Governmental Risks and Public Officials Errors and Omissions Coverage Form Claims-Made for Governmental Risks.

13. On May 6, 2016, the United States of America, for itself and the Pueblo of Santa Clara (the "Pueblo"), sued the City in Case No. 16-CV-00391-JCH-LAM, in the United States District Court for the District of New Mexico alleging that certain water and wastewater

infrastructure of the City is located on, and constitutes a trespass upon, real property belonging to the Pueblo.

14. On June 3, 2016, the Pueblo filed Pueblo of Santa Clara's Complaint in Intervention for Damages for Trespass [Doc 8] ("Pueblo's Complaint") in this matter (Case No. 16-CV-00391-JCH-LAM) generally alleging broader claims that portions of the City's infrastructure, including municipal roads are located on real property belonging to the Pueblo and constitute a trespass and that the Pueblo is entitled to damages.

15. The Insurers, through the Policy, promised to defend and indemnify the City from some or all of the claims brought against the City by the United States in the Complaint [Doc. 1] and the Pueblo in the Pueblo's Complaint [Doc. 8].

16. On or about August 10, 2016, the City demanded a defense and indemnification in this action, which the Insurers wrongfully denied on or about August 19, 2016.

17. An actual controversy exists between the City on the one hand and the Insurers on the other as to what obligations the Insurers owe the City under the Policy to defend and indemnify the City from the suit by the United States and Santa Clara Pueblo.

18. The City brings this Third-Party action for a declaration that the Insurers wrongfully denied the City's demand and that the City is entitled to defense and indemnification in the underlying action under the Policy.

WHEREFORE, the City of Española asks the Court to declare its rights and obligations under the Policy including whether the Insurers are obligated to defend or indemnify the City in this matter with respect to the damage claims asserted against them herein by the United States and the Pueblo; for attorney's fees and costs incurred in defending the underlying claims of the United States and the Pueblo; for costs, fees and expenses incurred in bringing this third-party

action as may be determined appropriate by the Court; and for such other and further relief to which the City may be entitled.

Respectfully Submitted,

COPPLER LAW FIRM, P.C.

/s/ Gerald A. Coppler
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Certificate of Service

I HEREBY CERTIFY that on the 27th day of March, 2017, I filed the foregoing electronically through the CM/ECF system, which caused all counsel of record and parties *pro se* to be served by electronic mail, fax, or USPS, as more fully reflected in the Notice of Electronic Filing.

/s/ Gerald A. Coppler